

REMARKS

Entry of the foregoing, and reexamination and reconsideration of the subject application, as amended, and in light of the remarks which follow, are both respectfully respected.

Claims 4-5 and 7-8 were pending in the present application at the time of the Office Action. The Patent Office rejected claims 4-5 and 7-8 under 35 U.S.C. § 102(b) as purportedly being anticipated by U.S. Patent No. 4,417,639 to Wegener. Claims 4 and 8 have been amended herein. Support for these amendments can be found, at the very least, at page 2, lines 21-22 of the subject application. Applicant respectfully submits that claims 4 and 8 are patentable over the cited art and other art of record. Thus, Applicant respectfully submits that claims 4 and 8 are in condition for allowance, as well as claims 5 and 7 which depend from claim 4.

I. The Claims Define Patentable Subject Matter

A. Claim 4

Claim 4 is directed to a patient levitation apparatus for a patient comprising a patient board having a patient side and a bottom, and a plenum member attached to the bottom of the patient board. The plenum member is adapted to receive a flow of pressurized air through an intake port. The patient board has an intake port hole adapted for receiving the intake port. The plenum member is further adapted to release the flow through a plurality of holes in the plenum member to provide a layer of air below the patient board supporting the patient.

B. The Wegener '639 Patent

The Wegener '639 patent is directed to a dynamic gas pressurized jacking structure and air pallet. The Wegener structure utilizes a series of air chambers to perform different functions, such as jacking (or raising a load off of a surface) or moving a load frictionlessly across an underlying support surface. The Wegener structure includes three main components: (1) backing member 12; (2) jacking member 14; and (3) flexible bottom sheet 16. In the structure, backing member 12 and jacking member 14 are spaced a certain distance apart, and sheet 16 encloses jacking member 14 and its edges are bonded to the *top* of backing member 12. While jacking member 14 is enclosed in this stacked relationship, the outer periphery of jacking member 14 is also bonded to sheet 16. An air inlet opening is provided in backing member 12 so that air may enter the space between backing member 12 and jacking member 14. Wegener describes this space as jacking plenum chamber 24. The structure also provides a space below jacking member 14 and between sheet 16. Wegener describes this space as air bearing plenum chamber 20. Slide valve 11 is provided so that when slid into an open position, air can escape jacking plenum chamber 24 through outlet hole 38 into air bearing plenum member 20. Again, the two chambers are separated by jacking member 14.

In operation, air enters jacking plenum chamber 24 through an air inlet opening defined by plate 32 and collar 34. Because jacking plenum member 24 is "essentially an imperforate chamber," Col. 3: 41-42, the air in jacking plenum member 24 acts as a jack to lift a load to the height defined by the space between backing member 12 and jacking member 14. When slide

valve 11 is slid to an open position, air enters plenum chamber 20 to allow “frictionless” movement of the load over the underlying support surface. However, jacking plenum member 24 still performs jacking of the load even when slide valve 11 is in the open position. Col 5: 24-25.

C. Claim 4 is Patentable Over Wegener

It is well settled that for a claim to be anticipated, each and every element of that claim must be shown in a prior art reference, either explicitly or under principles of inherency. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997).

The present invention differs from Wegener, at the very least, in that the present invention provides a plenum member attached to the bottom of the patient board, whereas Wegener provides intermediate structure including a jacking board disposed between the support board and the plenum member. The difference in structure translates into a difference in operation, as the pressurized air according to the invention, unlike that of Wegener, does not traverse an intermediate chamber defined by two different boards prior to entry into the plenum member. This facilitates use of the system in a hospital context.

Moreover, Wegener fails to teach that the plenum member is attached to the bottom of the patient board. As described specifically by Wegener, sheet 16 is attached to the top of backing member 12. Col. 2: 48-55. In contrast, Applicant’s invention recites that the plenum member is attached to the bottom of the patient board, thus, facilitating its use in the hospital context.

The Applicant, therefore, respectfully submits that the rejection of claim 4 under 35 U.S.C. §102(b), as purportedly being anticipated by Wegener, should be withdrawn, and claim 4 is in condition for allowance. Accordingly, the rejections of claims 5 and 8, which variously depend on claim 4, should be withdrawn and these claims placed in condition for allowance. Similarly, for reasons stated above, the rejection of claim 8 under 35 U.S.C. §102(b), as purportedly being anticipated by Wegener, should be withdrawn and these claims placed in condition for allowance.


CONCLUSION

Applicant respectfully submits that this application is in condition for allowance, and reconsideration and allowance of the application is respectfully requested. If the Examiner believes that prosecution might be advanced by discussing the application with Applicant's counsel, in person or over the telephone, we would welcome the opportunity to do so.

The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§1.16, 1.17 and 1.21 that may be required by this submission to Deposit Account No. 50-0206.

Respectfully submitted,

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Date: October 20, 2003

Documents being submitted with this Certification of Mailing under 1.8 are:

- Response to Office Action Mailed June 23, 2003
- Petition for One-Month Extension of Time and applicable fee
- Check No. 364947 in the amount of \$55.00
- Self-Addressed Stamped Return Postcard

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